

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

FILED

May 16, 1997

Cecil W. Crowson
Appellate Court Clerk

MARGARET ANN SCRUGGS,)
)
Plaintiff/Appellee,)

Marshall Chancery)
)
No. 01S01-9504-CH-00052)

vs.)

Hon. Tyrus H. Cobb,
Chancellor.)

NATIONAL HEALTHCORP, L.P.,)
d/b/a MERIHIL HEALTH CARE)
CENTER, INC.,)
)
Defendant/Appellant.)

For the Appellant: _____ For the Appellee:

Barbara G. Medley
Bussart & Medley
Lewisburg, Tennessee

Randal T. Wilson
Shelbyville, Tennessee

MEMORANDUM OPINION

AFFIRMED

MADDUX, SPECIAL JUDGE

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. For the reasons set forth below, the judgment of the trial court is affirmed.

The plaintiff, Margaret Ann Scruggs, injured her neck on December 25, 1991, while employed as a nurse's aid by the defendant, National Healthcorp, L.P., d/b/a/ Merihil Health Care Center, Inc. The plaintiff, was 52 years old at the time of trial. She did not finish the seventh grade. Her employment history consists of working as a private sitter and in various restaurants and factories. She has had training as a nurse's aide.

Plaintiff was first treated for her work-related neck injury by Dr. Kenneth J. Phelps. She informed Dr. Phelps that she was experiencing pain from her neck that was radiating down into her left arm causing loss of grip strength in her hand. Dr. Phelps confirmed plaintiff's complaint of pain and loss of grip strength, scheduled physical therapy and imposed lifting restrictions. Dr. Phelps continued to see plaintiff through October, 1992, because she continued to complain of symptoms similar to those she had complained of after the accident. She also indicated she had additional problems such as pain down her back and into her left leg, spasms in her back, difficulty sleeping and panic attacks.

From January of 1993 through January of 1994, plaintiff was treated by Dr. Richard Fishbein, an orthopedic surgeon. Dr. Fishbein diagnosed plaintiff as

having a cervical strain with nerve root irritation. He assigned a 6 percent permanent anatomical impairment rating to the whole body. He also suggested certain permanent restrictions regarding lifting.

A portion of the chancellor's memorandum states as follows:

"The medical testimony consists of the deposition of Dr. Phelps and Dr. Fishbein. Various medical reports and notes are attached as an exhibit to Dr. Fishbein's deposition.

Dr. Phelps' prognosis is somewhat confusing and it appears he was inconsistent at times. He does not give an impairment rating. Dr. Fishbein is of the opinion that Plaintiff sustains 6% permanent partial impairment to the body as a whole. His diagnosis is that of a cervical strain with nerve root irritation at C 5-6 and C 6-7. She retains limitation of motion. He restricted her from repetitive lifting to the right upper extremity to 5 to 10 lbs. and maximally 20 pounds."

After her injury the plaintiff tried to go back to work at several different businesses. Her injury prevented her from continuing to work at these jobs. Working as a nurse's aide is the job she really knows. She cannot perform that work now due to her injury.

The chancellor found that plaintiff had sustained a 40 percent permanent partial vocational disability to the body as a whole and awarded benefits accordingly. On appeal, defendant challenges the trial court's award as being excessive. Our review of the court's award is de novo on the record accompanied by a presumption that the trial court's judgment is correct unless the evidence preponderates otherwise.

Tenn. Code Ann. § 50-6-225(e)(2).

The extent of vocational disability is a question of fact to be determined from all the evidence, including lay and expert testimony. Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993); Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). Factors to be considered in determining the extent of vocational disability include the employee's job skills, education, age, training, duration of disability, extent of anatomical disability, and the employee's capacity to work at the kinds of employment available to her in her disabled condition. See Perkins v. Enterprise Truck Lines, Inc., 896 S.W.2d 123, 127 (Tenn. 1995); Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 678 (Tenn. 1991). Furthermore, the employee's own assessment of her physical condition and resulting disability is competent testimony that should be considered. Orman, 803 S.W.2d at 678.

In this case, the proof showed that the employee is 52 years old and has less than a seventh grade education. Her work experience is that of a private sitter, nurse's aide, restaurant employee, and factory worker. She was assigned a permanent anatomical impairment rating of 6 percent to the whole body and is restricted from repetitive lifting of more than 5 to 10 pounds, from occasional lifting of more than 15 pounds, and maximum lifting of 20 pounds. Considering the employee's age, educational level, and the limited scope of employment experience, these restrictions are of great significance. Additionally, the employee testified that she was no longer able to perform her job as a nurse's aide and that her physical problems have continued to persist more than two years after she was injured. Given

these circumstances, we cannot conclude that the evidence preponderates against the trial court's assessment of vocational disability.

For the foregoing reasons, the judgment of the trial court is affirmed.

Costs are taxed against the appellant.

John Maddux, Special Judge

Concur:

Frank F. Drowota, III, Justice

John K. Byers, Senior Judge

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MARGARET ANN SCRUGGS,	}	MARSHALL CHANCERY
	}	No. 8583 Below
<i>Plaintiff/Appellee</i>	}	
	}	Hon. Tyrus H. Cobb,
vs.	}	Chancellor
	}	
NATIONAL HEALTHCORP, L.P.,	}	
d/b/a MERIHIL HEALTH CARE	}	No. 01S01-9504-CH-00052
CENTER, INC.,	}	
	}	
<i>Defendant/Appellant</i>	}	AFFIRMED.

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Defendant/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on May 16, 1997.

PER CURIAM